

EXHIBIT “N”

City University of New York

New York City College of Technology

New Academic Building

Construction Management/Build Services Agreement

City University Construction Fund
Project No. NY-CUCF-01-08

New York City College of Technology- New Academic Building
Construction Management/Build Services

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CUCF from time to time, shall obtain and provide to CUCF written waivers of its own claims and of those of the Construction Manager's Subcontractors and suppliers to the Materials. In addition, all copyrightable Materials shall be "works for hire" (as that term is defined in the copyright laws of the United States) for CUCF, and all copyrights therein are expressly intended by the parties hereto to be wholly owned and the copyright to be held by CUCF. To the extent that any such copyrightable Materials may not, by operation of law, be works for hire, the Construction Manager, on its own behalf, on behalf of the Construction Manager's Subcontractors and suppliers, hereby assigns to CUCF the ownership of copyright in such Materials, and CUCF shall have the right to obtain and hold in its own name copyrights, registrations and similar protection which may be available in such items. The Construction Manager agrees to give, to cause its staff to give, and to cause its Subcontractors to give, from time to time, CUCF or its designee all assistance reasonably required or advisable to perfect such rights, including, without limitation, executing written assignments of copyright. The Construction Manager represents and warrants that it, its staff and its Subcontractors each and in all combinations are and shall be joint and/or sole author, as the case may be, of any and all Materials, and that the copyrightable Materials are and shall be original works not subject to any prior agreement, lien or other rights.

9.3. The Construction Manager further warrants that the Property and the Materials do not and shall not contain libelous, plagiarized, injurious or other such matter, and that the Property and the Materials do not and shall not infringe any copyright or violate any other right of any person whatsoever. The Construction Manager shall defend with counsel acceptable to CUCF, indemnify and hold CUCF, CUNY, the City of New York, the State of New York, and DASNY harmless against any and all claims, damages or expenses, including, but not limited to, attorney's fees and costs of litigation, arising out of a breach of any such warranty pertaining to copyrightable works.

9.4. The provisions of this Article shall not terminate with the term of this Agreement, shall not be suspended, and shall survive any termination or expiration of it.

ARTICLE 10 - CONSTRUCTION WORK

10.1 General Description of Construction Work: The Construction Manager shall provide all required construction work and materials for the Project only through its Subcontractors and suppliers, except for site and construction management activities. Such construction work shall include the removal and/or remediation of hazardous materials in the area of any required construction and/or demolition, if necessary. Hazardous materials shall include, without limitation, asbestos, methane, and lead. The Construction Manager shall provide CUCF with a Fee Proposal for the cost of the General Conditions, based upon the Work Schedule, as part of the Project Estimate, prior to the initiation of construction, within two weeks of being requested to do so by the Director.

10.2 Subcontracts for Construction Work: As authorized in a written directive from the Director and on the basis of fully coordinated Construction Documents, the Construction Manager shall enter into subcontracts for all construction work that the Construction Manager requires to complete the Project, but the Construction Manager shall enter into separate subcontracts for all plumbing work, electrical work, and HVAC work required for the Project as provided in this Agreement.

10.2.1 Competitive Bid Procedure for Construction Work: Before entering into any subcontract for construction work, the Construction Manager shall conduct the competitive bid procedure specified herein. Such competitive bid procedure shall be in accordance with all DDCM requirements, including without limitation, the items set forth below:

(a) The Construction Manager shall prepare a Request for Bids ("RFB") for the required construction work and shall submit the same to the Director for review and approval prior to issuance. The RFB shall include the following items:

- (1) Bid Form and Bid Breakdown. If so directed, the Construction Manager shall use the Bid Form provided by DDCM.
- (2) Form of subcontract. Such subcontract shall comply with the requirements set forth herein.

(3) The RFB shall include, without limitation, requirements applicable to bidders, as specified by DDCM, including without limitation, requirements for Minority and Woman-owned Business Enterprises (M/WBE) participation and construction safety. The Construction Manager shall comply with directions from DDCM regarding the review of requirements included in the RFB. After the receipt of bids, the Construction Manager shall determine bidder compliance with such requirements.

(4) Each bidder shall be required to submit a bid bond, or other security acceptable to the Director, with its bid. The form of bid bond shall be identical in all respects to the form of bid bond attached hereto in Exhibit E, with no variations, additions, or deletions to such form. In addition, the RFB shall require that all Subcontractors whose subcontracts are in excess of \$250,000 provide performance and payment bonds, each of which shall be in an amount equal to 100% of the subcontract price and shall name the Construction Manager as obligee thereunder. Such bonds shall be provided by a surety company licensed and authorized to do business in the State of New York. Such bonds shall be identical in all respects to the form of bonds attached hereto as Exhibit E, with no variations, additions, or deletions to such form of bonds. Premiums for required bonds must be included in the Subcontractor's bid price. The Subcontractor shall be required to submit two (2) originals of such bonds, one of which shall be submitted to CUCF by the Construction Manager immediately after receipt. With respect to performance and payment bonds submitted by Subcontractors hereunder, the Construction Manager agrees, immediately upon receipt of the bonds, to execute an irrevocable assignment to CUCF in accordance with the form of assignment attached hereto as Exhibit F. The Construction Manager shall submit such executed assignment to CUCF at the time it submits the original bonds.

(b) The Construction Manager shall comply with General Municipal Law (GML) Sections 101 and 103 with respect to all subcontracts, and, on behalf of CUCF, advertise, bid, including, without limitation, accepting bids, opening bids, and evaluating bids, and award those contracts in accord with such statutes. All Bidders must comply with the following items:

(1) Requirements specified by DDCM, including without limitation, for (a) depositing a sum of \$100 for hard copies of the bid documents (only in paper form, on compact disc, or comparable returnable media), which deposit shall be refunded upon the return of such bid documents in acceptable condition, (b) meeting any apprenticeship program requirements, (c) acceptable responses to any safety questionnaire, and (d) submitting with the bid a bond written by a surety licensed to transact such business in the State of New York. DDCM shall provide forms regarding these requirements. The Construction Manager shall determine bidder compliance with the same.

(2) Criteria for financial capability, responsibility, and experience, including, without limitation:

- (a) Financial capability and availability of appropriate resources
- (b) Technical expertise and experience with satisfactorily completed projects of similar size, scope, and complexity
- (c) Organization, staffing and ability to undertake the Work
- (d) Satisfactory record of performance, confirmed by references
- (e) Satisfactory record of business integrity
- (f) Record of compliance with all laws, rules, regulations, and executive orders applicable to the work
- (g) Demonstration that the bidder has a valid license for the work, unless expressly authorized in writing otherwise by the Director (applicable to electrical and plumbing work only)
- (h) Satisfactory safety record
- (i) Satisfactory record of compliance with M/WBE requirements

(c) The Construction Manager shall advertise the RFB through CUCF in no fewer than two (2) publications of The New York State Contract Reporter and The New York City Record and issue the RFB to all bidders expressing interest. The Construction Manager shall advise the Director in writing, not fewer than

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five (5) business days in advance of the date and time set for the bid advertising and bid opening. The Construction Manager may not open any bid on such date unless and until the Director's Representative is present for the bid opening.

(d) Firms submitting bids shall be required to complete and submit all forms or documentation the Director may require.

(e) The Construction Manager shall review all bids, select the lowest responsive and responsible bidders, submit to the Director a tabulation of all of the bids received, and identify the recommended bidder and the basis thereof for approval. The Construction Manager shall note if any bid contains an error, any conditions or exclusions, or any combination of these, and provide written notification of the same to the Director. The Construction Manager shall proceed as directed in writing by the Director. CUCF reserves the right to negotiate a lower price with each lowest responsible bidder; the Construction Manager will assist CUCF in such negotiations.

(f) As approved in writing by the Director, the Construction Manager shall award the subcontract to the lowest responsive and responsible bidder, who posts performance and payment bonds written by one or more sureties licensed to transact such business in the State of New York.

(g) Limitation: The Construction Manager shall not employ or otherwise engage, or cause or permit any Subcontractor or sub-subcontractor at whatever tier to employ or otherwise engage (1) the Construction Manager, (2) any subsidiary, affiliate or parent of the Construction Manager, or (3) any person whose immediate family member is employed by the Construction Manager at a salary in excess of ten thousand dollars (\$10,000.00) per annum, to perform work hereunder without the prior written approval of the Director. For purposes of this Section, the term "immediate family member" shall mean a wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, or stepchild.

10.2.2 Project Labor Agreement Option for Construction Work: In lieu of the Competitive Bid Procedure for Construction Work as set forth in Section 10.2.1, above, CUCF may, in its discretion, direct the Construction Manager to enter into a project labor agreement, as described in New York Labor Law Section 222, if it makes the determination required therein to do so. In such event, the project labor agreement shall govern the relationship among CUCF, the Construction Manager, and labor with respect to the construction work to be performed on this project.

10.2.3 Subcontract Requirements: Subcontracts between the Construction Manager and Subcontractors for construction work for the Project shall be in accordance with the provisions set forth below, unless otherwise authorized in a written directive from the Director.

- (a) Such subcontracts shall require that all labor performed and all material furnished thereunder shall strictly comply with all requirements of this Agreement.
- (b) Each such subcontract shall incorporate the material terms of this Agreement, including all addenda and appendices to it, and the DDCM Safety Requirements. Such subcontracts shall contain provisions approved in advance by the Director regarding, at least: (1) time for completion; (2) assessment of liquidated damages, (3) warranties and/or guarantees, (4) the provision required hereunder pertaining to the resolution of disputes related to this Agreement, (5) M/WBE compliance, and (6) compliance with anti-discrimination provisions.
- (c) Each such subcontract shall require that the Subcontractor who is party to it provide performance and payment bonds, each of which shall be in an amount equal to 100% of the subcontract price, and shall name the Construction Manager as obligee thereunder. Such bonds shall be provided by a surety company licensed and authorized to do business in the State of New York. Such bonds shall be

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identical in all respects to the form of bonds attached hereto as Exhibit E, with no variations, additions, or deletions to such form of bonds. Premiums for required bonds must be included in the Subcontractor's bid price. The Subcontractor shall be required to submit two (2) originals of such bonds, one of which shall be submitted to CUCF by the Construction Manager immediately after receipt. With respect to performance and payment bonds submitted by Subcontractors hereunder, the Construction Manager agrees, immediately upon receipt of the bonds, to execute an irrevocable assignment in accordance with the form of assignment attached hereto as Exhibit F. The Construction Manager shall submit such executed assignment to CUCF at the time it submits the original bonds. As additional security for the faithful performance of such subcontracts, the Construction Manager shall deduct and retain from all subcontractor progress payments five percent (5%) of the amount certified to be due thereunder.

- (d) (1) Each such subcontract shall require that the Subcontractor carry the types and amounts, proportionate to its subcontract, of insurance set forth in this Agreement and Appendix I hereof. All required policies shall be in accordance with the terms and conditions set forth in this Agreement. Proof of insurance shall be provided to CUCF in accordance with this Agreement.
 (2) Alternatively, if authorized to do so by the Director, the Construction Manager may meet its obligations regarding insurance by entering into a Contractor Controlled Insurance Program (CCIP) acceptable to the Director, in accordance with the insurance components, limits, endorsements, and all other insurance related terms and conditions set forth in this Agreement, to cover all sub-contractors, in lieu of requiring individual policies from each sub-contractor and shall be payable from the Allowance for Miscellaneous Expenses specified at Exhibit A hereof. Proof of insurance shall be provided to CUCF in accordance with this Agreement. Such CCIP shall include the services of an independent full-time Site Safety/Loss Control Engineer to be approved by the Director. At the conclusion of the project, after an audit acceptable to the Director has been completed, the Construction Manager shall refund to CUCF one-half of the difference between the amount paid for the CCIP by CUCF under this Agreement and the actual cost of the CCIP.
- (e) Each such subcontract shall contain the provisions set forth in the following articles of this Agreement, and shall require the Subcontractor's compliance with the same.
 - (1) Article 10.4 (concerning substantial completion);
 - (2) Article 10.5 (concerning damages for delay and extensions of time);
 - (3) Article 10.6 (concerning payment)
 - (4) Article 28 (concerning method of payment for Extra Work);
 - (5) Article 29 (concerning the Resolution of Disputes);
 - (6) Article 31 (concerning omitted work);
 - (7) Article 38 (concerning Labor Law Requirements);
 - (8) Article 39 (concerning Payroll Reports);
 - (9) Article 42 (concerning method of payment and retained percentages);
 - (10) Article 41 (concerning Noise Control Code Provisions);
 - (11) Article 45 (concerning termination without cause);
 - (12) Article 46 (concerning termination for cause);
 - (13) Article 49 (concerning Supplies, Labor, Services, Materials, and Tax Exemption)
 - (14) Article 51 (concerning Locally Based Enterprise Program);
 - (15) Article 65 (concerning Ultra Low Sulfur Diesel Fuel)
 - (16) Article 66 (concerning Ultra Low Sulfur Diesel Fuel - Consolidated Construction Act); and
 - (17) Article 68 (concerning Participation by Minority-Owned and Women-Owned Business Enterprises).
- (f) Each such subcontract shall contain the same terms and conditions with respect to damage for delay, and not less than the following:

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The [name of the Subcontractor] agrees to make no claim for damages for delay in the performance of this Agreement occasioned by any act or omission by CUCF or by any of its representatives, and agrees that for all delays it shall be compensated fully by an extension of time to complete performance of the work, as provided herein.

- (g) In removing all ambiguity concerning the resolution of every dispute between the Construction Manager and its Subcontractors related to the Project, each such subcontract shall contain the provision regarding the resolution of disputes set forth at Article 29 hereof, including, without limitation, the provision regarding the appeal from CUCF decisions as set forth at Article 29 hereof; such provisions shall apply to every dispute between the Subcontractor and the Construction Manager related to the Project. Excluding decisions that are the result of this dispute resolution process and are disputed by the Construction Manager or its Subcontractor, which the process requires to be appealed otherwise, either the Construction Manager or a Subcontractor must commence the resolution of a dispute pursuant to the provisions of this Article upon written notice to the other and to CUCF that such dispute will be resolved by CUCF.
- (h) Such subcontracts shall require that the Subcontractor agree not to make any claim against CUCF, its officers, agents or employees, by reason of such subcontract or any acts or omissions of the Construction Manager; provided however, such restrictions shall not apply to (1) demands filed by Subcontractors pursuant to Article 10.6 hereof, or (2) disputes submitted by Subcontractors pursuant to dispute resolution provisions contained in the subcontract, as described in paragraph 10.2.2(g).
- (i) Such subcontracts shall stipulate that the Subcontractor, without any further notification or other process, give its unconditional consent for its insurance carrier to release directly to CUCF documentation verifying its actual rate for workers' compensation insurance.

10.2.4 Payment to Subcontractors: Payment by the Construction Manager to Subcontractors and suppliers shall be in accordance with the provisions set forth below, in addition to other requirements referred to in other sections of this Agreement:

- (a) The Construction Manager shall pay each Subcontractor and supplier for and on account of work performed or materials delivered to the site in accordance with the terms of the respective subcontract and purchase order. To the extent the Construction Manager has not paid a Subcontractor or supplier before submission of a requisition to pay for the Subcontractor's work or supplier's materials covered by such requisition, the Construction Manager shall make its best efforts to pay such Subcontractor for such work and the supplier for such materials within seven (7) business days after the Construction Manager receives payment from CUCF for such work or materials, however in no event shall the Construction Manager take longer than ten (10) business days to pay such Subcontractor for such work and the supplier for such materials; the Construction Manager shall include in each of its subcontracts and purchase orders a provision requiring the Construction Manager to make such payments within such period. As required by the Director from time to time, the Construction Manager shall submit satisfactory evidence that it has made timely such payments. Independent of any other temporal requirement referred to in this Agreement, time is of the essence to the Construction Manager's payments to each Subcontractor and supplier.
- (b) The Construction Manager shall include on each requisition for payment the following data: the name of each Subcontractor and supplier covered by the requisition, a nominal description of the corresponding work and materials covered, the total value of the subcontract and purchase order, the total amount previously paid to the Subcontractor for work previously requisitioned and, to the extent applicable, the same information respecting the supplier, and the amount, including retainage, to be paid to the Subcontractor for work and to the supplier for materials included in the requisition.

- (c) The Construction Manager shall include with each requisition for payment the following documentation: evidence satisfactory to the Director that payments to laborers covered by such requisition comply with the Labor Law, such as verified payrolls; and releases and waivers of lien rights as to sums received by the respective Subcontractor in payment for the work and supplier for materials, with a reservation of claims identified in such release and waiver.

10.2.3.1 State Bank Account. The Construction Manager shall maintain and fund an account in a bank located within the State of New York into which all payments by the CUCF to the Construction Manager shall be deposited, with the Chicago branch of the Bank of America acceptable to CUCF. All payments by the Construction Manager to its Subcontractors and suppliers shall be made only from such account.

10.2.5 Approval of Subcontractors and Suppliers: All Subcontractors and suppliers, and the dollar amounts of their respective subcontracts and purchase orders, are subject to the prior written approval of the Director. If an approved Subcontractor elects to subcontract any portion of its subcontract, the proposed sub-subcontractor and the dollar amount of its sub-subcontract are subject to the prior written approval of the Director. If an approved supplier elects to obtain the covered materials from one or more other suppliers, the proposed suppliers and the dollar amount of each purchase order are subject to the prior written approval of the Director. No Subcontractor or sub-subcontractor shall be permitted on the Site until such written approval as required herein has been obtained. Any proposed change order to any subcontract(s) and any purchase order(s) hereunder are subject to the prior written approval of the Director. The Director's approval of a Subcontractor and of a supplier shall not relieve the Construction Manager of any of its responsibilities, duties, and liabilities hereunder.

10.2.6 Construction Manager's Responsibility for Subcontractors and Suppliers: In the event of default by any of the Construction Manager's Subcontractors, the following conditions shall apply:

- (a) The Construction Manager shall not be entitled to any payment whatsoever by CUCF for any and all expenses, including, without limitation, staffing and/or administrative expenses, incurred by the Construction Manager in connection with the process of defaulting such Subcontractor and/or the bidding and/or other procedures involved in obtaining another Subcontractor to complete the required Work.
- (b) The Construction Manager shall be responsible to compensate CUCF for any and all expenses, including without limitation administrative and/or professional design costs, incurred by CUCF in connection with the process of defaulting such Subcontractor and/or the bidding and/or other procedures involved in obtaining another Subcontractor to complete the required work. The Director shall determine the amount of any such expenses incurred by CUCF and such determination shall be final, binding, and conclusive upon the Construction Manager.

10.3 Liquidated Damages: In any event a Subcontractor(s) fails to achieve either Substantial Completion or the Date of Completion and Final Acceptance by the date or within the time specified, as the case may be, in the approved schedule, or any approved extension thereof, the Construction Manager shall collect from the Subcontractor(s) and pay over to CUCF as liquidated damages the sum equal to the amount specified in Exhibit A hereof for liquidated damages times each and every calendar day after such date or time until the Construction Manager achieves the respective Substantial Completion or Date of Completion and Final Acceptance, as the case may be. Notwithstanding any provision in this Agreement to the contrary, except for the payment over to CUCF of any liquidated damages assessed to the Subcontractor(s) as set forth herein, the Construction Manager shall not be liable to CUCF for liquidated damages.

10.3.1. The amount of liquidated damages is agreed upon by and between the Construction Manager and CUCF because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages that CUCF would sustain in said event. Such amount is agreed to be in the amount of damages which CUCF or its beneficiaries would sustain. Liquidated damages may be retained from time to time by CUCF.

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10.3.2 The Director shall specify and the Construction Manager shall include an amount of liquidated damages that is fair and reasonable for each subcontract with a Subcontractor or purchase order for a supplier.

10.3.3 Any and all moneys debited against a subcontract or collected by the Construction Manager as liquidated damages from its Subcontractors shall be paid by the Construction Manager to CUCF or debited, as the case may be, within thirty (30) days after each such debit or collection.

10.3.4 In each subcontract for construction work, the Construction Manager shall include a provision expressly giving CUCF a right of action against the Subcontractor in the event such Subcontractor fails to pay any liquidated damages determined to be due and owing thereunder.

10.4 Requirements for Substantial Completion: Substantial Completion of the required Work shall occur when, in the sole determination of the Director, all of the conditions set forth below have been satisfied.

- (a) Construction Manager has obtained and delivered to the Director: (1) each required written approval of every agency having jurisdiction over the work, including without limitation, the City of New York Department of Buildings, the Fire Department and the Department of Environmental Protection; and (2) all certificates of inspection for the Work, (3) a temporary Certificate of Occupancy for the Work; and (4) all warranties and guarantees referred to in the Contract Documents.
- (b) Construction Manager has provided all manuals for the operation and maintenance of, and completed all training sessions required for CUCF to use, the equipment and/or systems installed for the Project.
- (c) All utilities specified or required under the Agreement are connected and functioning properly.
- (d) CUCF can use and occupy the facility for the intended use and purpose.
- (e) Construction Manager and the Director's Representative have agreed in writing upon the Final Punch List and the date for Final Acceptance of all required Work, including completion of all Punch List items, or, if they are unable to agree, the Director's Representative has prepared and issued in writing to the Construction Manager the Final Punch List and the date of Final Acceptance.
- (f) All Work, except the items on the Final Punch List as approved by the Director's Representative, is complete in all respects and is in compliance with the Agreement to the satisfaction of the Director's Representative.
- (g) The Director's Representative has received from the Construction Manager a final verified statement of claims as described in Article 42 of the Agreement.
- (h) The Director's Representative has received from the Construction Manager written certification that Construction Manager has paid all taxes and fees (including real property taxes and income or franchise taxes) due and payable by Construction Manager prior to Substantial Completion.
- (i) Construction Manager has submitted written certification that all of the foregoing conditions have been satisfied and the Director has approved Construction Manager's certification.

Alternatively, Substantial Completion shall occur on any date certified by the Director, who shall have discretion to waive any of the foregoing conditions.

10.5 No Damages For Delay; Extensions of Time: The Construction Manager agrees to make no claim for damages for delay in the performance of this Agreement occasioned by any act or omission by CUCF or by any of its representatives, and agrees that any such claim shall be fully compensated by an extension of time to complete performance of the Work, as provided herein. If the performance of the Work, either by Construction Manager or by Subcontractors hereunder, is delayed for a reason referred to by Article 10.5.1 herein, the Construction Manager may be allowed a reasonable extension of time. An extension of time for subcontracted work may be granted only by the Director, upon written application by the Construction Manager. The parties agree that, with respect to this Agreement, the Construction Manager may encounter delays attributable to CUCF from time to time, including, without limitation, those which are unexpected and unforeseeable, in the progress of the Work, for which delays the Construction Manager agrees that it shall be fully and wholly compensated for each such delay solely and exclusively by an extension of time to complete performance of the Work, and agrees to make no other claim for damages for such delay. The Construction Manager hereby waives and relinquishes all other damages for delay.

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10.5.1 Grounds for Extension: If such written application is made to the Director, the Construction Manager shall be entitled to an extension of time for delay in completion of Work, if such delay is caused solely: (1) by the acts or omissions of CUCF, its officers, agents or employees; or (2) by the act or omissions of other contractors; or (3) by unavoidable delay, as defined in Article 1.35 hereof, or other supervening conditions entirely beyond the control of either party hereto. The Construction Manager shall, however, be entitled to an extension of time for such causes only for the number of days of delay which the Director may determine to be due solely to such causes, and then only if the Construction Manager shall have strictly complied with all of the requirements of Articles 8, 16, and 17 hereof.

10.5.2 Extension for Concurrent Causes of Delay: The Construction Manager shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the subcontracted work as determined by the Director, irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of the Construction Manager or of his Subcontractors or materialmen, and would of itself (irrespective of the concurrent causes) have delayed the subcontracted work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission. The determination made by the Director shall be binding and conclusive on the Construction Manager. The granting of an application for an extension of time for causes of delay other than those herein referred to shall be entirely within the discretion of the Director.

Permitting the Construction Manager to continue with the subcontracted work after the time fixed for its completion has expired, or after the time to which such completion may have been extended has expired, or the making of any payment to the Construction Manager after such time, shall in no way operate as a waiver on the part of CUCF of any of its rights under this Agreement.

10.5.3 Application for Extension of Time: Before the Construction Manager's request for a time extension for subcontracted work may be approved, the Construction Manager must within five (5) days after commencement of the condition which allegedly has caused or is causing the delay, submit a written application to the Director identifying:

- (a) the Construction Manager; the Subcontractor; the Agreement registration number; and Project description;
- (b) liquidated damage assessment rate, as specified in the subcontract;
- (c) original subcontract bid amount;
- (d) the original subcontract start date and completion date;
- (e) any previous time extensions granted (number and duration); and
- (f) the extension of time requested.

In addition, the application for extension of time shall set forth in detail:

- (a) the nature of each alleged cause of delay in completing the work;
- (b) the date upon which each such cause of delay began and ended and the number of days attributable to each such cause;
- (c) a statement that the Construction Manager waives all claims except for those delineated in the application, and the particulars of any claims which the Construction Manager does not agree to waive. For time extensions for final completion payments, the application shall include a detailed statement of the dollar amounts of each element of claim item reserved; and
- (d) a statement indicating the Construction Manager's understanding that the time extension is granted only for the purpose of permitting continuation of performance and payment for work performed and that CUCF retains its right to conduct an investigation and assess liquidated damages as appropriate.

10.5.4 Determination of Time Extensions: Time extensions for subcontracted work shall be determined in writing by the Director.

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10.5.5 Delay Analysis: For extensions of time for final completion payments for subcontracted work, the CUNY construction management staff shall prepare a written analysis of the delay (including a preliminary determination of the causes of delay, the beginning, and end dates for each such cause of delay, and whether the delays are excusable under the terms of the Agreement). The report shall be made a part of the contract file.

10.5.6 Assessment of Liquidated Damages: In the case of final completion payments for subcontracted work, liquidated damages shall be assessed as determined by the delay analysis. However, neither the failure to assess liquidated damages at this time, nor the report itself, nor the granting of a time extension at final completion, shall operate as a waiver or release of any claim CUCF may have against the Subcontractor for either actual or liquidated damages.

10.6 Payment Guarantee

10.6.1 In the event the terms of this Agreement do not require the Construction Manager or its Subcontractor(s) to provide a payment bond, CUCF shall, in accordance with the terms of this Article, guarantee payment of all lawful demands for: (a) wages and compensation for labor performed and/or services rendered, and (b) materials, equipment, and supplies provided, whether incorporated into the Work or not, when demands have been filed with CUCF as provided hereinafter by any person, firm, or corporation which furnished labor, material, equipment, supplies, or any combination thereof, in connection with the Work performed hereunder (hereinafter referred to as the "beneficiary") at the direction of CUCF, the Construction Manager or its Subcontractor(s). For the purpose of this Article 10.6, Subcontractor shall mean any person, firm, or corporation, other than employees of the Construction Manager, who or which contracts with the Construction Manager to furnish, or actually furnishes, labor, or labor and materials, or labor and equipment, at the site or in the performance of any of the Work hereunder.

10.6.2 The provisions of Article 10.6.1 above are subject to the following limitations and conditions.

- (a) The guarantee is made for the benefit of all beneficiaries as defined in Article 10.6.1, above, provided that those beneficiaries strictly adhere to the terms and conditions of this Article 10.6.2.
- (b) Nothing in this Article shall prevent a beneficiary providing labor, services or material for the work from suing the Construction Manager or its Subcontractor(s) for any amounts due and owing the beneficiary by the Construction Manager or its Subcontractor(s).
- (c) All demands made against CUCF pursuant to this Article shall be made within four (4) months from the date payment is due on the invoice or invoices submitted by the beneficiary to the Construction Manager or its Subcontractor(s) for labor or work done or for materials or supplies delivered, or, if the demand is for wages, four (4) months from the date the wages were due to be paid to the beneficiary.
- (d) All demands made against CUCF by such beneficiary shall be presented to the Director's Representative along with all written documentation concerning the demand which the Director's Representative deems appropriate or necessary, which may include, but shall not be limited to: the subcontract or sub-subcontract; any invoices presented to the Construction Manager or Subcontractor for payment; the notarized statement of the beneficiary that the demand is due and payable, that a request for payment has been made of the Construction Manager or Subcontractor and that the demand has not been paid by the Construction Manager or Subcontractor within the time allowed for such payment by the subcontract or sub-subcontract, and copies of any correspondence between the beneficiary and the Construction Manager or Subcontractor concerning such demand. CUCF shall notify the Construction Manager or Subcontractor that a demand has been made. The Construction Manager or Subcontractor shall inform CUCF of any defenses to the demand, and shall forward to CUCF any documents CUCF requests concerning the demand.
- (e) CUCF shall make payment only if, after considering all defenses presented by the Construction Manager or Subcontractor, it determines that the payment is due and owing to the beneficiary making the demand.
- (f) CUCF will not initiate the payment process of this Article or make payment on a demand where the beneficiary making the demand has filed a lien against the Work or otherwise sues CUCF prior to receiving a written notice from CUCF that it will not pay the demand.

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- (g) No beneficiary shall be entitled to interest from CUCF, or to any other costs, including but not limited to attorney's fees.

10.6.3 Upon the receipt by CUCF of a demand pursuant to this Article, CUCF may withhold from any payment otherwise due and owing to the Construction Manager under this Agreement an amount sufficient to satisfy the demand.

- (a) In the event CUCF determines that the demand is valid, CUCF shall notify the Construction Manager of such determination and the amount thereof, and direct the Construction Manager to pay immediately such amount to the beneficiary. In the event the Construction Manager, within seven (7) days of receipt of such notification from CUCF, fails to pay the beneficiary, such failure shall constitute an automatic and irrevocable assignment of payment by the Construction Manager to the beneficiary for the amount of the demand determined by CUCF to be valid. The Construction Manager, without further notification or other process, hereby gives its unconditional consent to such assignment of payment to the beneficiary and authorizes CUCF, on its behalf, to take all necessary actions to implement such assignment of payment, including without limitation the execution of any instrument or documentation necessary to effect such assignment.
- (b) In the event that the amount otherwise due and owing to the Construction Manager by CUCF is insufficient to satisfy such demand, CUCF may, at its option, require payment from the Construction Manager of an amount sufficient to cover such demand and exercise any other right to require or recover payment which CUCF may have under Law or this Agreement.
- (c) In the event CUCF determines that the demand is invalid, any amount withheld pending CUCF's review of such demand shall be paid to the Construction Manager; provided, however, no lien has been filed. In the event a lien has been filed, the terms and conditions set forth in Article 24 shall apply.

10.6.4 The provisions of this Article shall not prevent CUCF and the Construction Manager from resolving disputes in accordance with the provisions of Article 29 hereof.

10.6.5 In the event CUCF determines that the beneficiary is entitled to payment pursuant to this Article, such determination and any defenses and counterclaims raised by the Construction Manager shall be taken into account in evaluating the Construction Manager's performance.

10.6.6 Nothing in this Article shall relieve the Construction Manager of the obligation to pay the claims of all persons with valid and lawful claims against the Construction Manager relating to the work.

10.6.7 The Construction Manager shall not require any performance, payment or other bonds of any Subcontractor, unless required by Article 10.2.2.

10.6.8 The payment guarantee made pursuant to this Article shall be construed in a manner consistent with Section 137 of the State Finance Law and shall afford to persons furnishing labor or materials to the Construction Manager or its Subcontractors in the prosecution of the Work under this Agreement all of the rights and remedies afforded to such persons by such section, including but not limited to, the right to commence an action against CUCF on the payment guarantee provided by this Article within the one year limitations period set forth in Section 137.

ARTICLE 11 - CONSTRUCTION MANAGEMENT SERVICES

11.1 General: The Construction Manager shall provide, to the satisfaction of the Director, all services necessary and required for the inspection, bidding, letting of contracts, supervision, management, coordination, close out and all other general administration of the Project, so the required construction work is successfully completed in a timely fashion. The Construction Manager shall provide construction management services as directed in writing by the Director. The services to be provided by the Construction Manager shall include without limitation the services set forth in this Article. The Construction Manager shall fully cooperate with representatives of the Director concerning all